IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE
CIVIL REVISION APPLICATION NO.37 OF 2005

Mohandas Kotian Petitioner

Vs.

Mrs.Seema Manohar Parmanand & ors. Respondents

Mr.Abhay Patki for petitioner.

Mr.M.L.Hegde for Resp.Nos.1 and 2.

CORAM: B.H.MARLAPALLE,J.
June 14, 2005.

ORAL ORDER:

1. Heard the learned counsel for the respective parties. The applicant has brought in question the decree passed by the City Civil Court at Mumbai in S.C.Suit No.7745 of 1999 on 24-1-2005.

2. The plaintiff Manohar Narayan Parmanand who was an Architect and carrying on his profession in the name and style of M.N.Parmanand sought recovery of possession of the suit premises under Section 6 of the Specific Relief Act against the defendants, the suit premises being an office cabin admeasuring 13' 1/2" x 12' 1/2" and waiting room having width of 6' 1/2" located in K.K.Chambers in the Fort area of Mumbai city. The suit premises were demarcated with

orange colour in the plan annexed to the plaint at Exhibit "B". The suit premises are owned by the defendant no.3. The defendant no.1 is the widow of late Kishanchand Bhatia from whom she inherited the tenancy in respect of the suit property. Whereas the defendant no.2 is a clearing and forwarding agent, carrying on business in the firm name and style of M/s. Interlinks Shipping Services and claims to have acquired the tenancy rights after the same having been surrendered by the defendant no.1. As per the plaint one Manohar Narayan Parmanand is the husband of plaintiff No.1(a) and father of plaintiff No.1(b) who was not keeping good health and, therefore, he was not attending the suit premises which were lying under the lock and key of the original plaintiff. They used to visit the suit premises occasionally and on 29-11-1999 when the original plaintiff along with his wife visited the suit premises it was found that defendant no.2 was occupying the suit premises. They suspected foul play and lodged police complaint on 29-11-1999 with the Senior Inspector of Police, Azad Maidan Police Station. As they could not obtain any relief by filing the police complaint and on 30-11-1999 the plaintiff’s wife came to know from defendant no.1 who informed her that she had

surrendered her tenancy to defendant no.2 subject to the right of the plaintiff and defendant no.2 was inducted as a new tenant in the suit premises, S.C. Suit No.7745 of 1999 came to be filed on or about 14-12-1999 for restoration of possession as noted earlier.

3. On notice the defendant no.2 filed his Written Statement but defendant nos.1 and 3 did not file any Written Statement. The defendant no.2 raised a defence that he had not taken forcible possession of the suit premises by breaking open the lock put up by the original plaintiff prior to November 1999 and that he was tenant of defendant no.3. In fact the defendant no.3 was not the landlord of the suit premises when the suit was filed and defendant no.3 purchased the suit premises from M/s.Kedarnath Kishanchand Pvt.Ltd. during the pendency of the suit. By considering the rival contentions the following Issues were framed by the trial Court and answered accordingly:

1. Whether plaintiffs prove that original plaintiff was in possession of the suit premises viz. cabin and waiting room, more

particularly demarcated with red colour in the plan annexed at page 29 of the plaint, prior to forcible dispossession by the defendants by breaking open the lock put by the deceased original plaintiff prior to 29.11.1999? Answered in the affirmative.

2. Whether plaintiffs are entitled for mesne profit as well as damages as claimed in the suit? Answered in the negative.

Plaintiff No.1(a) had stepped in the witness box and similarly defendant no.2 followed. He relied upon in all 11 documents out of which six were admitted by the plaintiffs' Advocate and they came to be marked as Exhibit 2 to Exhibit 7. The documents submitted by the plaintiff were marked as Exhibit A to Exhibit R. Defendant nos.1 and 3 remained absent all through out and, therefore, no witness was examined on their behalf. The trial Court noted that in view of the alleged date of forcible dispossession being 29-11-1999, the documents which were required to be considered six months prior to the date of possession would commence from 29-5-1999 and accordingly the documents were admitted.

4. PW 1 Smt.Seema Manohar Parmanand deposed that her husband was a sub licensee of one Harbans Gupta who was the licensee of Dr.K.K.Bhatia and the said Dr.Bhatia in turn was the tenant of the suit premises. After the death of Dr.Bhatia the tenancy rights devolved upon his widow Smt.Damyanti Bhatia and the original leave and licence agreement was executed by the original plaintiff with Harbans Gupta - the original tenant of the suit premises on 13-9-1967. The plaintiff relied upon the Bank statement in support of the proof of compensation along with the electricity bill and telephone bill etc. having been paid, during the period of six months prior to the alleged date of forcible dispossession. Initially in September 1999 a sum of Rs.750/- was paid by cheque and another sum of Rs.1750/- was sent by cash by money order. The cheque was duly encashed and had reflected in the Bank statement. The money order receipt and rent receipt were placed on record. Another cheque was sent by covering letter on 19-11-1999 to defendant no.1 and defendant no.1 refused to accept the same. The original passbook of Savings Bank Account No.185625 at Exhibit "A" reflected the payment to

Dr.Bhatia for the period from May 1999 and encashed upto 5-10-1999. This evidence went unchallenged. The telephone bills and electricity bills were standing in the name of defendant no.1 and in her absence the payment receipts could not be brought on record. PW 1 further stated that the original plaintiff was in continuous use and occupation of the suit premises right from 13-1-1969 till the forcible dispossession in the month of November 1999. Her husband's health deteriorated and he had to undergo an operation in 1999 when he was hospitalized for about eight days. The Court Commissioner who had visited the suit site had submitted his report dated 24-12-1999 at Exhibit "L". It was clear from the said report that certain articles referred to by PW 1 during her depositions were found lying at the suit premises. It was claimed by defendant no.2 that these articles belonged to defendant no.1 but he could not prove the same. The trial Court noted that the defendant no.1 was a party in the suit and she never claimed the possession of these articles. In his cross-examination DW 1 admitted that he was not personally aware whether the articles listed in the Commissioner's report were belonging to defendant no.1.

. There is another documentary evidence which the trial Court relied upon viz. the Deed of Surrender executed by Dr.K.K.Bhatia on 5-7-1999. The plaintiff had relied upon this document at Exhibit "K" to prove the possession of the original plaintiff whereas the defendant no.2 relied upon another Deed of Surrender marked at Exhibit "2". The execution of the Deed of Surrender at Exhibit "K" was not disputed and in fact defendant no.2 had admitted the same. The relevant clause in the Deed of Surrender (Exhibit "K") read as under:

> The said Bhatia hereby confirms having surrendered today the tenancy of the said premises (without receipt or payment of any consideration from or to JCT) to JCT and delivers up peaceful possession of the said premises to JCT along with an occupant Mr. M.N.Parmanand, as the same is no longer required by Bhatia."

The trial Court, therefore, recorded a finding that the original plaintiff was occupying the suit premises with the knowledge of Defendant Nos.1 and 3

and he was not a party to the Deed of Surrender allegedly signed in favour of Defendant No.2. The trial Court also recorded a finding that on account of admission of the Deed of Surrender at Exhibit "K" the defendant no.2 was aware that the suit premises were in possession of the original plaintiff.

5. It was also noted by the trial Court that during his deposition DW 1 had two different versions. On one hand he stated that he became the tenant from 5-6-1999 and at the same time he admitted the surrender of tenancy by the original tenant on 5-7-1999 in favour of the original plaintiff. He further stated that though it was executed on 5-7-1999 he became the tenant from 5-6-1999 i.e. one month in advance. The trial Court found these depositions unreliable. The trial Court was satisfied that the plaintiffs had established their possession continuously six months prior to the alleged date of dispossession and there was a case made out to pass the decree by allowing the said suit partly.

6. The assessment of the evidence as made by the trial Court does not suffer from any errors. On the

other hand the defendant no.2 could not bring any evidence of substance to negative the contentions of the plaintiffs regarding continuous possession prior to the date of forcible dispossession in November 1999. The issue of limitation was also taken up by the defendant in asmuchas the suit was not filed within six months from the date of dispossession. The trial Court noted that the forcible dispossession came to the knowledge of the plaintiffs on 29-11-1999. The Court referred to the depositions of PW 1 and more particularly the following statements made in the examination-in-chief :

> "I say that in about May / June 1999 the ailment of the deceased original plaintiff caused by enlargement of the prostrate glands aggravated and he was advised rest. The deceased original plaintiff, therefore, could not personally attend his office in the suit premises except once or twice a month to fetch certain files and papers."

The Suit was filed on 14-12-1999. The trial Court noted that the issue of limitation was not specifically raised in the Written Statement and,

therefore, it was not framed. If such an issue was raised then the same could have been answered with reference to the last visit made on 13-5-1999 to the suit premises. The date of knowledge was 29-11-1999 and the tenancy was created in favour of defendant nos.2 and 3 on 5-7-1999 and thus the suit filed on 14-12-1999 with reference to 5-7-1999 was not beyond a period of six months.

7. The reasoning set out by the trial Court in allowing the Suit partly and granting the decree for the possession of the suit premises does not suffer from any errors apparent on the face of the record and on the contrary, as noted earlier, the assessment of the evidence has been just and proper. The challenge to the impugned decree, therefore, is devoid of merits and hence the revision fails. The revision application is hereby rejected summarily.

(B.H.MARLAPALLE,J.)